

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

JOSE VELEZ,

Plaintiff,

v.

JACK SPRATS LLC, RANCH  
RESTAURANT, ALEXANDER’S GREEK  
CUISINE; DOES 1-10, inclusive

Defendants.

Case No.: 6:19-cv-01493-MK

FINDINGS AND RECOMMENDATION

**KASUBHAI, Magistrate Judge:**

Plaintiff, proceeding *pro se*, brought this action alleging violations of Americans with Disabilities Act (“ADA”) and Oregon Unlawful Trade Practices Act. Compl. ¶ 1, ECF No. 1. Before the Court is Defendants Jack Sprats LLC and The Ranch Restaurant’s Motion to Sever. ECF No. 20; *see also* ECF Nos. 21-22. Plaintiff opposes severance. Pl.’s Resp., ECF No. 25. Plaintiff also moves to strike certain documents in his response to Defendants’ Motion to Sever. *Id.* at 1.

For the reasons stated below, Defendants’ Motion to Sever (ECF No. 20) should be GRANTED. Plaintiff’s Motion to Strike (ECF No. 25) filed within his response to Defendants’ motion should be DENIED as moot and for failure to comply with LR 7-1(b).

### **DISCUSSION**

Under Federal Rules of Civil Procedure 20:

Persons ... may be joined in one action as defendants if (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action.

Defendants argue that any injuries Plaintiff could have suffered did not arise out of the same transaction, occurrence, or series of transactions or occurrences required by Rule 20. Defs.’ Mem. 7, ECF No. 22. According to Plaintiff’s Complaint, he “visited, within the last two years, Jacks Sprats [LLC] at 510 E Main St, Cottage Grove, OR 97424[,]” “The Ranch Restaurant at 1971 Anlauf Rd, Yoncalla, OR 97499[,]” and “Alexander’s Greek Cuisine [at] 643 SE Jackson St, Roseburg, OR 97470[.]” Compl. ¶¶ 20-22, ECF No. 1. The three defendants are located in three different cities. Plaintiff does not allege any relationship among these defendants. *See* Compl., ECF No. 1.

Plaintiff responds that Defendants violated the ADA and challenges many other statements in Defendants’ motion. ECF No. 25. However, Plaintiff does not respond to Defendants’ argument based on Rule 20. *Id.* Plaintiff has waived the argument concerning Rule 20. *United States v. McEnry*, 659 F.3d 893, 902 (9th Cir. 2011) (where an argument is available but not raised, it is waived); *Hanse v. Long*, 2014 WL 3435871, \*14 (C.D.Cal. Jan. 28, 2014), *adopted* 2014 WL 3436156 (C.D.Cal. July 10, 2014) (failure to address argument in reply is a concession of the argument).

The Court finds that the facts as alleged do not arise out of the same transaction, occurrence or series of transactions or occurrences. Inclusion of the two moving defendants in this action would not comport with fundamental fairness and would result in prejudice to them. Accordingly, Defendants Jack Sprat LLC and The Ranch Restaurant should be severed from this case.

### **CONCLUSION**

Defendants' Motion to Sever (ECF No. 20) should be GRANTED. Defendants Jack Sprat LLC and The Ranch Restaurant should be dismissed from this case. Plaintiff's Motion to Strike (ECF No. 25) should be DENIED as moot and for failure to comply with LR 7-1(b).

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Federal Rule of Appellate Procedure 4(a)(1) should not be filed until entry of the district court's judgment or appealable order.

The Findings and Recommendation will be referred to a district judge. Objections to this Findings and Recommendation, if any, are due fourteen (14) days from today's date. *See* Fed. R. Civ. P. 72. Failure to file objections within the specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.1991).

DATED this 24th day February 2020.

s/ Mustafa T. Kasubhai  
MUSTAFA T. KASUBHAI  
United States Magistrate Judge